IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9380 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI AMBALAL PRAJAPATI
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR TR MISHRA for the Petitioner
MR AMIT PATEL, ASSTT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 21/11/2007

ORAL JUDGMENT

1. Heard the learned counsel for the parties.

2. The petitioner has approached this Court under Article 226 of the Constitution of India for writ of

Mandamus and/or any other appropriate writ, order to the respondents for calculating and paying the arrears of difference in pay from 9.6.1975 till 1997 pursuant to order dated 1.9.1997 passed by the concerned authority, Government of Gujarat.

3. The facts, in brief, deserve to be set out as under:

3.1. The petitioner was working as work charge karkoon and, thereafter, he was promoted as Work Assistant with effect from 1.6.2000. The petitioner alongwith other similarly situated employee was constrained to file Special Civil Application No.5587 of 1986 for seeking the benefits of Government Resolution dated 1.8.1986 extending the benefit of regularization and parity in scale and emoluments to the persons like the present petitioner. During the pendency of that petition, the Government of Gujarat issued order dated 1.9.1997 indicating therein that the petitioner and other similarly situated person who filed Special Civil Application No.5587 of 1986 were fulfilling all the criteria for receiving the benefits under Government Resolution dated 1.8.1986 and, therefore, they deserved to be accorded the same benefits on condition that they withdraw the petition, being Special Civil Application No.5587 of 1986, from the Court. The procedure for giving the benefit was undertaken only after the proof of the matter being withdrawn was produced before the competent authority.

3.2. The petitioner alongwith other, thereafter, made a request to the Court for withdrawing the said petition, being Special Civil Application No.5587 of 1986. The Court [Coram: S.K. Keshote, J.(as he then was)] passed the following order:-

> "A copy of the order of the Government dated 1.9.1997 has been placed on the record by the counsel for the petitioners which has been taken on record with the consent of the parties.
>
> The counsel for the petitioner states that in view of the aforesaid order of the Government, he may be permitted to withdraw this Special Civil Application to which the counsel for the respondent has no objection. Order accordingly.
>
> The Special Civil Application is dismissed as withdrawn. Rule is discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs."

The Executive Engineer, Capital Project, Division No.1 appears to have passed an order, being order No.1336 of 1997, fixing the pay of the petitioner in the pay scale of Rs.260- 400/- (Pre-revised) from 1975 onwards till 1985. The petitioner has also been paid arrears from 1997 to 2000. But, the petitioner has not been paid arrears from 1975 till 1997, which, as per the petitioner, was admissible to him. It is

categorically averred by the petitioner in para 3 of the memo of petition that the other similarly situated employees, Shri C.P. Patel and Shri V.R. Patel, have been paid arrears accordingly. However, the present petitioner is left high and dry as he has not been paid arrears of difference of salary till 1997. The petitioner, in fact, addressed the notice through advocate on 20.7.2000 demanding the arrears of difference in salary from 1975 onwards. The said notice was replied by the Superintending Engineer, Capital Project Circle, Gandhinagar informing him that the others, like Shri B.A. Prajapati, etc. have been paid arrears only after receiving appropriate clarification. His case is also put up to the concerned authorities. But, it appears that it had been pending with the Local Fund and Account Office and appropriate action will be taken at their end, therefore, it was replied by the respondents that nothing is required to be done as they have completed their formality. The petitioner has not been paid the arrears of difference of salary and, therefore, he was constrained to prefer the present petition for appropriate direction and/or writ of Mandamus to the respondents.

3.3. On 6.9.2000, this Court [Coram: S.K. Keshote, J (as he then was)] passed the following order:

> “Mr. T.R. Mishra for petitioner. Heard learned counsel for the petitioner. Rule, returnable on

26th September, 2000. The respondents are directed to file reply to the SCA on or before that date. In case reply is not filed on the said date, the respondent No.2 is directed to remain present in the Court alongwith relevant record of the matter. On that date, the matter be placed on the final hearing Board."

3.4. On 6.9.2000, this Court made Rule returnable on 26.9.2000 and a direction came to be issued to respondent No.2 to reply to the Special Civil Application on or before that date. It was also specifically observed in the order that, in case, reply was not filed by them, respondent No.2 was directed to remain present in the Court alongwith the relevant papers of the matter and the matter was ordered to be placed on final hearing Board.

4. Today, when the matter was called out, learned Assistant Government Pleader Mr. Patel made a request for time. This Court did not accept the request as sufficient time had been given to the State for filing reply. In fact, the respondents were categorically directed to file reply on or before 26.9.2000. The Court issued Rule on 6.9.2000. Despite this order, the respondents have chosen not to file reply. Therefore, now in the year 2007, request for adjournment deserved to be rejected and accordingly, it was rejected.

5. Mr. T.R. Mishra, learned counsel appearing for

the petitioner, submitted that the petitioner has been paid, in fact, the arrears of difference in salary prospectively from 1997 and the petitioner was entitled to receive the benefit of pay fixation and arrears from 1975 as it is made available in respect of similarly situated employees Shri C.P. Patel and Shri V.R. Patel, as it is specifically averred in para 3 of the petition that the petitioner has wrongly been denied the same from 1975. Learned advocate Mr. Mishra submitted that the reply sent by the Superintending Engineer, vide his communication dated 1.8.2000, also does not indicate any valid reason for not granting the arrears in difference of salary from 1975. The ground urged that the issue is pending at the Local Fund level cannot be said to be a valid ground for denying payment to the petitioner. Learned advocate Mr. Mishra submitted that the petition, therefore, deserves to be allowed.

6. Shri Amit Patel, learned Assistant Government Pleader, has submitted that letter dated 1.8.2000 addressed by the Superintending Engineer clearly indicates that the clearance from Local Fund was absolutely essential before making payment of arrears to such employees. In fact Shri B.A. Prajapati was also paid only after the pay fixation was cleared by the Local Fund's office. In the case of the petitioner, the matter was pending at the level of Local Fund and, therefore, it was not paid. Shri Patel, learned Assistant Government Pleader

obviously could not reply to the query as to why till 2007, the Local Fund's office has not decided and cleared the payment to the petitioner of arrears of difference in salary from the year 1975. Therefore, Shri Patel, learned Assistant Government Pleader, in absence of any reply from the respondents, obviously was not in a position to answer this query.

7. This Court has heard the learned counsel for the parties and perused the record. It is indeed unfortunate that the person, like the petitioner, had to move the Court twice for his legitimate right, which appears to have been denied to him for no valid reason. The petitioner in the first instance had to file a petition alongwith other similarly situated employee, being Special Civil Application No.5587 of 1986. During the pendency of the said petition, the respondents did pass an order on 1.9.1997 clearly indicating that the petitioner and other similarly situated employees were fulfilling the criteria laid down in Government Resolution dated 1.8.1986 and, therefore, on a condition of withdrawing the said petition, they were to be given the benefits of the Government Resolution dated 1.8.1986. In solemn hope of due compliance of the order at the end of the Government, the petitioner withdrew the petition as it is noted above on 9.9.1997. The respondent authorities, for the reasons best known to them, did not comply fully with their assurance spelt out in letter dated

1.9.1997, in pursuance whereof, the petitioner and others were persuaded to withdraw their petition. The pay fixation appears to have effected vide order dated 15.12.1997 and arrears from 1997 to 2000, i.e. prospectively has also been paid to the petitioner. The claim of the petitioner with regard to the arrears in difference of salary from 1975 has been said to have been pending clearance from the Local Fund's office, which is part and parcel of the State. The reply to the notice given by the Superintending Engineer on 1.8.2000 also makes it abundantly clear that the arrears is admissible and, in fact, it was paid in case of Shri B.A. Prajapati after it was cleared by the Local Fund. The case of the petitioner was said to have been pending for clearance from the Local Fund. In the year 2007, nothing is placed on record, indicating as to whether the Local Fund has cleared or, if not, then on what ground it is not cleared. The State was given ample opportunity to file reply. Enough time has gone by, as on 6.9.2000, while issuing Rule, this Court [Coram: S.K. Keshote, J. (as he then was)] has categorically directed the respondents to file reply latest by 26.9.2000. Rule was made returnable. No action whatsoever has been taken either to pay difference of salary or to justify their stand by way of affidavit-in-reply. In absence of the affidavit-in-reply, this Court is left with no choice but to accept the averments made in the memo of petition as they have remained uncontraverted despite the opportunity being available to the State.

8. The petitioner has prayed for payment of arrears with interest of 18% per annum as the State has not taken appropriate steps for releasing the payment and the petitioner was constrained to file the present petition. Shri Patel, learned Assistant Government Pleader, resisted this prayer of interest and submitted that the interest may not be awarded. The Court is unable to accept the submission of Shri Patel, learned Assistant Government Pleader. Had the State been vigilant, it would have paid up the amount or at least filed an affidavit-in-reply justifying withholding of the amount. In absence of affidavit-in-reply and in absence of any justification for withholding the amount and looking to the petitioner's plight, who had to approach the Court twice for same cause of action, the request for awarding some interest deserves to be accepted.

9. In view of the aforesaid discussion, the petition deserves to be allowed and the following directions is issued in the interest of justice:

(a) The respondents are hereby directed to calculate the difference of salary and arrears from 1975 till 1997 and furnish a copy of the said calculation to the petitioner within 15 days from the receipt of the copy of the order and after supplying the copy of the calculation of amount payable to the petitioner, the amount which is payable shall be paid to the petitioner

within a period of 15 days thereafter with interest at the rate of 9% per annum from 1998 till the date it is paid.

10. The petition stands allowed. Rule is made absolute accordingly. No cost.

(S.R.BRAHMBHATT, J.)

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